

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

<p>Steven Allen Nelson, Sr.,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>State of Minnesota; Minneapolis City Council Members; and Minnesota Department of Health,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 21-CV-1825 (SRN/DTS)</p> <p style="text-align: center;">ORDER OF DISMISSAL</p>
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SUSAN RICHARD NELSON, United States District Judge

Rule 12(h)(3) of the Federal Rules of Civil Procedure requires that “[i]f the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.” Because plaintiff Steven Allen Nelson, Sr., has not adequately pleaded a basis for the Court’s jurisdiction over this matter, this action will be dismissed without prejudice.

Nelson alleges in his complaint and accompanying materials that various officials of the State of Minnesota and City of Minneapolis acted unlawfully in banning the sale of menthol cigarettes in Minneapolis. The exact legal basis for Nelson’s claims is unclear; Nelson does not cite a specific federal or state law pursuant to which he is seeking relief.

Under Rule 8(a)(1) of the Federal Rules of Civil Procedure, “[a] pleading that states a claim for relief must contain . . . a short and plain statement of the grounds for the court’s jurisdiction.” In his complaint, Nelson alleges that diversity of citizenship, *see* 28 U.S.C. § 1332(a), supplies the statutory basis for the Court’s jurisdiction over this matter, *see*

Compl. at 3 [Doc. No. 1]. But Nelson also alleges that both he and the defendants are each citizens of the State of Minnesota. *See id.* Because the parties are plainly *not* of diverse citizenship, § 1332(a) cannot supply a statutory basis for the Court's jurisdiction.

Nelson does not allege any other basis for the Court's subject-matter jurisdiction, and no such basis is obvious from the complaint. For example, the pleading does not appear to present a federal question of law such that 28 U.S.C. § 1331 could serve as a basis for jurisdiction. No federal constitutional provision, statute, or other federal legal provision is cited by Nelson as grounds for relief. Section 1331, then, cannot supply a statutory basis for the Court's jurisdiction either.

Without jurisdiction, the Court cannot proceed to the merits of Nelson's lawsuit. *See Fed. R. Civ. P. 12(h)(3).* Accordingly, this matter will be dismissed without prejudice and Nelson's pending application to proceed *in forma pauperis* will be denied as moot.

Based on the submissions and the entire file and proceedings herein, **IT IS HEREBY ORDERED** that

1. This matter is **DISMISSED WITHOUT PREJUDICE** for lack of jurisdiction.
2. The application to proceed *in forma pauperis* of plaintiff Steven Allen Nelson, Sr. [Doc. No. 2] is **DENIED AS MOOT**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: September 8, 2021

s/Susan Richard Nelson
SUSAN RICHARD NELSON
United States District Judge